AMENDMENT UNDER 37 C.F.R. § 1.111 Attorney Docket No.: Q96905

Appln. No.: 10/593,465

REMARKS

Claims 9 and 11-19 are all the claims pending in the application. Claim 9 has been amended to incorporate the recitation of claim 10, and claim 10 has been canceled, accordingly.

Entry of the amendment is requested, respectfully.

A. Claim Rejections - Double Patenting

The Examiner issues a provisional nonstatutory double patenting rejection over claims 1, 2, 4, 5 and 7-12 of co-pending application No. 12/182,772.

The Examiner is requested to hold this rejection in abeyance, because on October 19, 2010. USAN 12/182.772 will become abandoned as of July 19, 2010.

B. Claim Rejections - 35 U.S.C. § 103

Claims 9-11, 18 and 19 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Leitz et al. (4,877,627).

The Examiner's position is that Leitz et al. teaches that soluble dietary fiber is associated with a reduction of lipoproteins, serum cholesterol and glucose intolerance. The Examiner views the teaching of reduction of glucose intolerance as reading on a decrease in glucose absorption that results in elevated blood glucose. The Examiner concedes that Leitz et al. does not teach the active step of administering the composition to an individual in need thereof, but concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to administer the cited composition to a person in need of inhibiting elevated blood glucose levels. The Examiner further concludes that one of ordinary skill in the art would have recognized that the benefits of improved blood glucose levels can decrease the risk of insulin resistance and type II diabetes.

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Initially, Applicants believe that the Examiner thinks that the acerola "pulp" used in the reference is the fruit or leaf of acerola. This understanding, however, is not correct. The term "pulp" in the technical field pertinent to the present invention is used to mean "the soft succulent portion of a fruit" as evidenced by a dictionary, McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Edition. Please see the attached copy of page 1605 of the dictionary. The Leitz document is silent about "leaf" of acerola. Those skilled in the art would not understand that the acerola "pulp" means the leaf of acerola. Thus, the basis of the Examiner's position is not correct.

Thus, Leitz et al. does not teach the use of acerola leaf extract or a processed product thereof. Rather Leitz et al. only teaches the use of a nutritional high fiber composition, of which only 30 to 48.5% is fiber derived from fruit and vegetable groups, wherein at least one of the fibers from the fruit and vegetable groups is selected from the group consisting of lemon, acerola and carrot. The current claims recite the use of acerola leaf extract, which is composed of more than soluble fibers. Leitz et al. also does not teach the use of products that comprise polyphenols, as now recited in claim 9. Therefore, Leitz et al. can not be said to motivate one of ordinary skill in the art to use acerola leaf extract to inhibit blood glucose level elevation.

Rather, in order to obtain this element of the present claims, the Examiner, relies on hindsight. That is, only by reference to the present specification can the Examiner state that acerola leaf extract should inhibit blood glucose level elevation. Leitz et al. does not in any way teach or suggest inhibiting blood glucose level elevation using acerola leaf extract.

In view of the above remarks and amendments to the claims, the Examiner is requested, respectfully, to reconsider and remove this rejection.

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In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Susan J. Mack/

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Date: September 27, 2010

McGraw-Hill Dictionary of Scientific and Technical Terms Fifth Edition

Sybil P. Parker Editor in Chief

McGraw-Hill, Inc.

San Francisco Washington, D.C.

Auckland Bogotá Caracas Lisbon London Madrid Mexico City Milan Montreal New Delhi San Juan Singapore Sydney Tokyo Toronto collimonary stences [MED] Narrowing of the critice of the pulmonary artery. ['palma,ner's sto'n0-sas] pulmonary valve [ANAT] A valve consisting of three semi-stance constants and the pulmo-stance constants.

inary trunk. ['pulmo,nere 'valv]
pulmonary veln [ANAT] A large vein that conducts oxygenmated blood from the lungs to the heart in tetrapods. ['pul-

ma.nere 'van l Englimonary ventilation [FHYSIO] The volume of gus entering and exiting the lungs per unit time of respiration. [pulmo, ner

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the ventoriassion | The ve

[pulp [ANAT] A mass of soft spongy tissue in the interior of an JOAN J. Armss of soft spongy tissue in the interior of an Borgan. [now] The soft succepted portion of a fuel. [Invol.] We slime. [MATER] The cellulosic material produced by re-debting wood mechanically or chemically and used in making japaper and cellulose products. Also known as wood pulp. [4] polp.]

cavity of a tooth. ['polp châm-bar]
-pulper [MEGHENO] A machine that converts materials to pulp

Frontier Consultation of the Consultation of t timoldin)

pulpotomy [MED] Surgical removal of the pulp of a tooth. [pol/pide-one] surgical removal of the pulp of a tooth, [pol/pide-one] pulpatone [harras] A block of sandstone cut into wheels for straight one paper manufacture, [cf polypaton]

ulpwood [MATER] Any wood that can be reduced to pulp. ['polp,wed]
Dulear [ASTROPHYS] A celestial radio source, emitting intense

short bursts of radio emission; the portiods of known pulsars frange between 33 miliseconds and 3.75 seconds, and pulso galuations range from 2 to about 150 milliseconds with longer-"[period pulsars generally having a longer pulse duration.

pulsatance [PHYS] Angular velocity in radians, equal to 2m times frequency in hertz. ('pel-sed-ons)
pulsating current [ELEC] Periodic direct current. ('pel-side

in (keront)

pulsating electromotive force [ELEC] Sum of a direct elec-tromotive force and an alternating electromotive force. Also known as pulsating voltage. ['pol_addig ijlektro|mōdiv

5-Yours j. Problem [200] Irregular fluid flow in a piping system posterior resulting from the pressure variations of reciprocessing vocapractions or purpose within the system. J Pol. addie 120 J. publishing star [3-street]. Weisble star whose luminosity there is a problem of the publishing star [3-street]. Weisble star whose luminosity there is a problem of the publishing star [3-street]. Weisble star whose luminosity there is seen to be a publishing star [3-street]. The publishing star [3-street] is consequently to come from other land to the publishing star [3-street]. The publishing star [3-street] is considered to the publishing star [3-street].

pulsating voltage See pulsating electromotive force.

('pol,såd-in' völ-tij') pulsation [PHYSIO] A beating or throbbing, usually thythmic,

Outsainon 199330] A oceang or turcooung, usuany tynyumuc, "atso of the heart or an artery, 1994's than 3 pulsation dampening (1830) Device installed in a fuld pip-ling system (age or liquid) to eliminate or even out the fluid-flow "pulsations caused by reciprocating compressors, pumps, and usuch, 1991's technology of the pulsation welding. See multiple-impulse wolding. [pol'sti-pulsation welding See multiple-impulse wolding. [pol'sti-

(shan ,weld-in)

pulse [PHYS] A variation in a quantity which is normally constant; has a finite duration and is usually brief compared to the time scale of interest. [PHYSIO] 1. The regular, recurrent, palpable wave of arterial distention due to the pressure of the blood ejected with each contraction of the heart. 2. A single wave. | pols |

padas altineter [100]. A dovice reliab is used to menure the destance of an internal there has present by reading successive signals in abort pulses and measuring the time delay between the leading edge of the trensmitted pulse and that of the pulse parties are present as the proper successive and the proper successive pulses are properly in the properly properly properly pulses are properly properly pulses without appreciably consening their waveforms. (*ples jumps, fire*) The pulse average efficiency interna-tional property of the pulse are properly pr

neous, or other magnitude of a pulse, usually with respect to

taneous, or other magnitude of a pulse, usually with respect to the normal constant value; the exact meaning should be specified when giving a numerical value. ['pais jample, tid]' pulsa-amplitude discriminator [gwo] Electronic instrument used to investigate the amplitude distribution of the pulses pro-duced in a nuclear detector. ['pois jampla, tild di'skrimra, nich

pulse-amplitude modulation [COMMUN] Amplitude modu-lation of a pulse carrier. Abbreviated PAM. { 'pals 'am-plo,tild ,mhj'-o,lärshan }

populae amplitude modulation - frequency modulation pulse amplitude modulation - frequency modulation (constant) System in which pulse-amplitude-modulated sub-carriers binary and to frequency-modulate a second carriers binary digits are formed by the absence or presence of a pulse in an assigned position. I puls fample, titld, mbjra, listen freekwans at, mbjra, listen | freekwans at, mbjra, listen |

pulse analyzer [ELECTR] An instrument used to me pulse widths and repetition rates, and to display on a cathode-

pulse widths and repetition prates, and to display on a cathode-ny screen the wewform of a pulse. [*pols, awa_Dirac*] | reper pulse of the pulse of

mitting pulses without unacceptable distortion. ('pols

pulse carrier [commun] A pulse train used as a earrier. pulse circult [triscra] An active electrical network designed to respond to discrete pulses of current or voltage. { 'pol, sor

kot l pulse code [CORMUN] A code consisting of various combi-nations of pulses, such as the Morse code, Baudot code, and the blancy code used in computers. ['pals, kod') pulse-coded accuming beam [INAV] 1.A radioorradar beam which is swey over a sector of space and is accompanied by a repeased puttern of pulses that is varied to inclease the position

repeated pattern of pulses that is varied to indicate the position of the forum in space. Z. A system of ground equipment that generates such beams at microwave frequencies to firmish guidance to aircraft making microwave landings. Abbreviated PCOB. [198: 506d'dd (kard)) jbem | pulsed-ode modulation (COMMANN) Modulation in which the pulsed-ode modulation (COMMANN) for the size of the transmitted is

peak-to-peak amplitude range of the signal to be transmitted is divided into a number of standard values, each having its own divided into a number of standard values, each having its own three-place occle each sample of the signal is then tumenitied as the code for the nearest sandard amplitude. Abbreviated PCM. [*pols ked, mijo*[*leiban a] pulse-code moduletton televiation [coansun] A television system in which digital signals using a pulse code are transmitted, rather than analog signals. [*pols ked, mijo*[*leiban televiation applied to the pulse code are transmitted, rather than analog signals.

systems | pulse coder. { 'ppls ,kodor } pulse coding and correlation [cosettor] A general tech-nique concenting a variety of methods used to change the trans-mitted waveform and then decode upon its reception; pulse compression is a special form of pulse coding and correlation. ['ppls [kod-ing on ,kilro*limshon]

pulse column [CHRM ENG] Continuous-phase process col-umn (such as liquid only or gas only) in which the flow-through

unn (unch as liquid only or gas only) in which the flow-through in pulsating used to innersee man-transfer rate, as in a liquidpulsate communication (construint). Radio communication using pulse modulation. 1 "puls las, mayiras, skelmon] in
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